

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JENNYLYNN ADAMWICZ,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC, a
foreign corporation, et al.,

Defendants.

Case No. 3:22-CV-00033-LRH-CSD

ORDER

Plaintiff Jennylynn Adamwicz initiated this action in the Second Judicial District Court for Washoe County, Nevada on August 20, 2021. On January 21, 2022, Defendant Keolis Transit Services, LLC (“KTS”) filed a notice of removal to this Court (ECF No. 1),¹ asserting diversity jurisdiction.

After review of the complaint, Defendant’s petition for removal and statement of removal, the Court finds that it requires more evidence to determine whether it has subject matter jurisdiction over this case. While it appears that the parties are of diverse citizenship,² Defendant has not demonstrated that the amount in controversy exceeds \$75,000.

BACKGROUND

Adamwicz alleges she was injured while attempting to board one of the buses that KTS operates. The Regional Transportation Commission of Washoe County (“RTC”) contracts with

¹ Refers to the Court’s docket entry number

² Plaintiff alleges she is a Californian and Defendant is a Delaware corporation with its principal place of business in Massachusetts. (ECF No. 1.)

1 KTS to operate certain bus services in Washoe County. KTS hires, trains, supervises, and employs
 2 the drivers who drive the buses. Although the complaint listed the RTC, the entity was
 3 subsequently dismissed and KTS is the only remaining defendant. (ECF No. 1-4 at 1.)

4 Adamwicz's state court complaint alleges negligence, negligence per se, negligent hiring,
 5 training, supervision, and respondent superior/vicarious liability. (ECF No. 1-2.) Adamwicz's
 6 prayer for relief demands, "general damages in excess of \$15,000.00, special damages in excess
 7 of \$15,000.00, costs of suit and attorney's fees, judgment for interest and further relief as this Court
 8 deems just and proper." (ECF No. 1-2 at 7.) KTS's state court answer affirmative defenses allege
 9 comparative negligence and failure to mitigate damages. (ECF No. 1-5 at 3.)

10 KTS premises removal on diversity jurisdiction and the amount in controversy exceeds
 11 \$75,000. (ECF No. 1.) Specifically, KTS alleges Adamwicz is a Californian and KTS is a wholly
 12 owned subsidiary of Keolis Transit America, Inc., a Delaware corporation with its principal place
 13 of business in Massachusetts and an amount in controversy exceeding \$75,000.00 (ECF No. 1.)

14 DISCUSSION

15 If a district court discovers it lacks original jurisdiction over a removed claim it must
 16 remand the case to state court. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004)
 17 ("We are obligated to consider sua sponte whether we have subject matter jurisdiction."). A
 18 defendant may remove any civil action from state court to the federal district court "embracing"
 19 the place where the action is pending if that district court has original jurisdiction. 28 U.S.C.
 20 § 1441(a). A federal district court has original jurisdiction where (1) the action is between citizens
 21 of different states, and (2) the amount in controversy exceeds \$75,000.00, exclusive of interest and
 22 costs. 28 U.S.C. § 1332(a). Here, Adamwicz does not contest diversity of citizenship and it is clear
 23 to the Court that complete diversity exists between the parties.³

24 To determine if the amount in controversy requirement is met, the Court first considers
 25 what is "facially apparent" from the complaint. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d
 26 373, 377 (9th Cir. 1997). In doing so, the Court simply reads the complaint to determine the amount

27
 28 ³ Plaintiff alleges she is a Californian and Defendant is a Delaware corporation with its principal place of business in Massachusetts.

1 in controversy. *Id.* at 375. In Nevada state courts, where demanded damages exceed \$15,000.00,
 2 the pleader must request damages “in excess of \$15,000.00,” without further specification of the
 3 amount. Nev. R. Civ. P. 8(a)(4).

4 Adamwicz’s state court complaint alleges negligence, negligence per se, negligent hiring,
 5 training, supervision, and respondent superior/vicarious liability. (ECF No. 1-2.) Adamwicz’s
 6 prayer for relief demands, “general damages in excess of \$15,000.00, special damages in excess
 7 of \$15,000.00, costs of suit and attorney’s fees, judgment for interest and further relief as this Court
 8 deems just and proper.” (ECF No. 1-2 at 7.) In Adamwicz’s petition for exemption from
 9 arbitration, she only listed medical expenses incurred to date in the amount of \$30,543.65. (ECF
 10 No. 1-6 at 3.)

11 When the amount of damages is unclear from plaintiff’s state court complaint, the
 12 defendant has the burden of proving “by a preponderance of the evidence,” that the required
 13 amount in controversy is met. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir.
 14 1996). Here, the burden to demonstrate that the amount in controversy is greater than \$75,000.00,
 15 rests with KTS and the Court decides whether that burden has been satisfied.

16 To satisfy this burden, the defendant “must set forth the underlying facts supporting its
 17 assertion that the amount in controversy exceeds the statutory minimum.” *Muniz v. Pilot Travel*
 18 *Centers LLC*, Case No. CIV. S-07-0325 FCD EFB, 2007 WL 1302504, at *3 (E.D. Cal.
 19 May 1, 2007); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992). Courts in this circuit
 20 “may consider facts in the removal petition” to determine whether the defendant has established
 21 the requisite amount in controversy. *Singer*, 116 F.3d at 377. However, the defendant’s assertion
 22 that the amount in controversy exceeds the jurisdictional minimum cannot be supported by
 23 conclusory allegations. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090–91 (9th
 24 Cir. 2003). In *Valdez*, the Ninth Circuit found that one supporting statement offered by an insurer
 25 in its removal petition was not sufficient to show by a preponderance of the evidence that the
 26 amount in controversy exceeded \$75,000.00. 372 F.3d at 1117 (rejecting the insurer’s claim that
 27 “upon information and belief, [it] submit[s] that the amount in controversy . . . exceeds
 28 \$75,000.00.”). The *Valdez* Court concluded that a statement based solely on the defendant’s

1 “[i]nformation and belief” hardly constitutes proof by a preponderance of the evidence.” *Id.*
 2 “Where doubt regarding the right to removal exists, a case should be remanded to state court.”
 3 *Matheson*, 319 F.3d at 1090.

4 Here, in asserting that the amount in controversy requirement has been satisfied, KTS relies
 5 solely on the allegations in Adamwicz’s complaint and petition for exemption from arbitration
 6 (ECF Nos. 1-2, 1-6.) However, the Court finds that it is not facially apparent from the complaint
 7 that more than \$75,000 is in controversy. To the contrary, based on the allegations in the
 8 complaint, a reasonable inference is that the amount in controversy is less than the jurisdictional
 9 threshold.⁴ Accordingly, jurisdiction has not been established.

10 The Court will provide Defendant additional time to present “summary-judgment-type
 11 evidence” showing by a preponderance of the evidence that this case meets § 1332(a)’s amount in
 12 controversy requirement.

13 IT IS THEREFORE ORDERED that Defendant is granted twenty (20) days from entry of
 14 this Order to establish the minimum amount in controversy for federal jurisdiction. Plaintiff is
 15 granted ten (10) days to file an opposition. No reply is required.

16 IT IS SO ORDERED.

17
 18 DATED this 25th day of January, 2022.

19
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 21 
 22 LARRY R. HICKS
 23 UNITED STATES DISTRICT JUDGE
 24

25 ⁴ The Court notes in particular that, according to the petition for exemption from
 26 arbitration, Adamwicz only asserts medical bills in excess of \$30,543.65. (ECF No. 1-6 at 3.) The
 27 Court further notes that, although Plaintiff seeks general and special damages, the mere possibility
 28 of a damages award is not sufficient to prove that the amount in controversy requirement has been
 met. Instead, Defendant must present evidence indicating that the amount of damages Plaintiff
 seeks will, more likely than not, exceed the amount needed to increase the amount in controversy
 to more than \$75,000. *See McCaa v. Massachusetts Mutual Life Insurance Company*, 330 F. Supp.
 2d 1143, 1149 (D. Nev. 2004).